

**RESOLUTION NO. \_\_, 2015**

**A RESOLUTION OF THE BOARD OF PUBLIC WORKS AND SAFETY  
TO DECLARE PROPERTY AN ECONOMIC DEVELOPMENT PROJECT  
AND TO APPROVE OF A DISPOSAL PROCESS**

**WHEREAS**, the City of Columbus own property at 148 Lindsay Street which is commonly known as the Pumphouse (the “Pumphouse”);

**WHEREAS**, the Pumphouse is uniquely located and possesses unique characteristics which makes it a prime location for a regional draw restaurant or retail establishment;

**WHEREAS**, due to the Pumphouse’s historical significance and the City’s desire to maintain the integrity of the building, the Pumphouse will be encumbered with a preservation easement from Indiana Landmarks to protect the façade of the building moving forward;

**WHEREAS**, there are plans to connect the Columbus People Trail system parallel to the river bank of the Pumphouse and in places, the trail will encroach upon the Pumphouse property creating a need for a permanent and temporary easement;

**WHEREAS**, the Pumphouse is bordered along the east with the Louisville and Indiana Railroad and the only entrance to the property is across that railroad which requires certain licensing agreements;

**WHEREAS**, the disposal of the property creates a unique challenge due to the relatively low appraised value, the encumbrances on the property with the preservation easement and proximity to the railroad, and the amount of investment needed to refurbish the property;

**WHEREAS**, the unique challenges, location and opportunities for the redevelopment of the Pumphouse into a space that would be open to the public and would reenergize the building and area are significant challenges and opportunities which leads to the designation of the property as an economic development project pursuant to I.C. 36-1-11-4.2;

**WHEREAS**, the disposal of the property pursuant to I.C. 36-1-11-4.2 would allow the City to enter into negotiations with a potential purchaser and dispose of the property;

**WHEREAS**, it is the desire of the City to conduct a public disposal process by accepting proposals outlining minimum qualifications and those that meet the minimum qualifications will be invited to participate in a bidding process.

**NOW THEREFORE**, be it resolved that the City of Columbus Board of Works & Public Safety that the property located at 148 Lindsay Street, Columbus, Indiana is declared to be an economic development project as set forth in I.C. 36-1-11-4.2 for the reasons set forth above.

**BE IT FURTHER RESOLVED**, that the Request for Proposal and Notification to

Bidders Process attached hereto as Exhibit "A" is adopted as the disposal process for the Pumphouse property.

**ADOPTED BY THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF COLUMBUS, INDIANA ON THE 10<sup>TH</sup> DAY OF FEBRUARY, 2015.**

\_\_\_\_\_  
Kristen Brown, Mayor

\_\_\_\_\_  
Robert Sullivan, Member

\_\_\_\_\_  
Robert Crider, Member

\_\_\_\_\_  
Caleb Tennis, Member

\_\_\_\_\_  
Jason Hyer, Member

ATTEST:

\_\_\_\_\_  
LuAnn Welmer, Clerk-Treasurer

# Request for Proposal and Notice to Bidders

(Pursuant to IC § 36-1-11-4.2)

## Disposal of property located at 148 Lindsay Street, Columbus (commonly known as the Pumphouse)

**Date:** February 10, 2015

**Property Location:** 148 Lindsay Street, Columbus, Indiana

**Response Due Date and Time:** February 27, 2015 by 9:00 a.m.

**Property:**

The City of Columbus owns property located at 148 Lindsay Street (the “Pumphouse”). The City desires to sell the Pumphouse while maintaining the historical integrity of the façade of the building. All proposals will be subject to the following: 1) Indiana Landmarks Preservation Easement (attached hereto); 2) temporary and permanent easements for the construction and ongoing maintenance of a future people trail (attached hereto and it is expected the construction easement will have an expiration date of twenty-four (24) months from the date of closing); 3) Encroachment Agreement with the Louisville and Indiana Railroad (attached hereto); 4) License Agreement with the Louisville and Indiana Railroad (attached hereto); and 5) current zoning restrictions.

**Property Summary:**

Background: The Pumphouse is a historically significant building which is eligible for inclusion on the National Register of Historic Places. The Pumphouse is located in the heart of downtown Columbus. Over the past several years, downtown Columbus has seen a remarkable transformation with the Commons being reconstructed, three parking garages being built, over 140 downtown apartments being added, 4<sup>th</sup> Street transformed into an urban outdoor entertainment space spanning two blocks, and Columbus’ largest employer, Cummins Inc., has expanded its workforce in the downtown to approximately 3,400 employees with the addition of two corporate office buildings.

Recently, the City of Columbus designated a defined area of downtown as the Columbus Arts District and received the prestigious and exceptional designation of an Indiana Cultural District.

Columbus is one of only five Indiana Cultural Districts. Our downtown has the highest concentration of world renowned architecturally significant buildings, pieces of public art and landscape. As a result, downtown has become our city's central core that strengthens our sense of community. It brings us together to enjoy community events, cultural activities, arts and entertainment.

The Pumphouse is located in the City's Riverfront District. The City's Riverfront District has additional 3-way liquor licenses available to it above and beyond the standard license quota from the state. As of the time of the release of this document, there were three (3) Riverfront District 3-way liquor licenses available. Approval for use of one of these licenses is subject to local and state approval.

Request: The City is interested in receiving any and all proposals from qualified candidates that have a proposal that will appeal across all socioeconomic and age groups. Those proposals meeting the minimum criteria set forth below will be invited to participate in a closed bidding process. The ultimate disposal of the Pumphouse will then be based upon high bid for the property.

Criteria: The proposals will be reviewed according to the following criteria; therefore, please provide necessary documentation, narratives, etc. for review and determination (CAUTION – a proposal must demonstrate compliance with the criteria set forth below to receive an invitation to bid):

1. Financial Strength - Proof of financial ability not only for the purchase of the property but investment of at least \$2 million within the next twenty-four (24) months (this is not a requirement of that level of investment within that period of time but the ability to do so).
2. Regional Draw – the proposal should outline the concept and demonstrate the ability to provide a regional draw.
3. History, Experience and Confidence of Success – the proposal should demonstrate the operational capabilities of the concept and those involved including relevant experience and a concept with detail specific to the Pumphouse.
4. Demographic Served – all socioeconomic groups and ages considered.
5. Timing – the ability to improve the property with reasonable promptness.
6. Price – the initial offer of sales price for the property must be \$285,000 to be eligible to participate in the bidding process.
7. No Broker Fees – the City will not pay any broker fees for the sale of the Pumphouse through this process.

Purchase Agreement: The successful proposal will enter into a standard commercial purchase agreement with the City. Should the successful bidder fail to enter into an agreement with the City, the City may seek any and all remedies available at law.

Term: The property is being offered for sale as-is subject to the conditions listed above.

Offering price: The City has received two appraisals on the property which took into account the encumbrance on the property of the Indiana Landmark Easement. One appraisal identified the value as being \$350,000 and the other appraisal identified the value as \$220,000. To receive an invitation to participate in the bidding process, your initial bid must be at least \$285,000.

After the initial review of the proposals, those proposals that have met the minimum criteria will receive an invitation to participate in the bidding process for the property. The starting bid will be the highest bid received from those proposals participating in the bidding process. The city attorney will conduct the bidding process with the participants at a date, time and location to be determined.

**Proposal and Bidding Process and Timeline:**

- Deadline to receive proposals which must meet the minimum criteria as set forth above (received by February 27).
- Review of proposals by two (2) members of the Board of Public Works and Safety and the city attorney to ensure compliance with minimum criteria (March 2-3)
- An invitation to participate in a bidding process extended to those proposals meeting the minimum criteria (March 4)
- A closed bidding process to be held with those that submitted proposals meeting the minimum criteria (date, time and location to be coordinated with the parties involved) (week of March 9)
- A recommendation by the proposal review committee to the Board of Public Works and Safety (March 17)
- A recommendation by the Board of Public Works and Safety to the City Council for Council's final decision (April 7)

**Proposal Submittal Requirements:**

Respondents shall submit three (3) sealed copies of their proposal and one electronic version (disc or flash drive is acceptable) of the proposal, by the date and time included in this Request for Proposal and Notice to Bidders. The outside of the envelope should be clearly marked with "Pumphouse Proposal."

Due Date: Sealed proposals and PDF files are due at the office of the City Attorney (address below), on or before **February 27, 2015 at 9:00 a.m.**

Submit to:

Jeff Logston, City Attorney and Executive Director of Administration  
City Hall  
123 Washington Street  
Columbus, Indiana 47201-6774

Questions/Tour of the Space:

Jeff Logston, City Attorney and Executive Director of Administration  
(812) 376-2527 office  
[jlogston@columbus.in.gov](mailto:jlogston@columbus.in.gov)

All documents submitted as part of the bidder's proposal will be deemed confidential during the evaluation process. Bidder proposals will not be available for review by anyone other than the evaluation team or its designated agents. There shall be no disclosure of any bidder's information to a competing bidder prior to award of the contract. All applicable information will be subject to public disclosure in accordance with the Indiana Access to Public Records Law, at award of contract, cancellation of this Request for Proposal and Notification to Bidders, or within 180 days, whichever shall occur first.

Each proposal shall contain evidence of financial responsibility and viability. All financial and conceptual information that you do not wish to become public should be marked "confidential". The proposal does not need to be accompanied by a certified check.

**Other Information:**

- Contact by or on behalf of the prospective purchaser regarding this Request for Proposal and Notice to Bidders and the related solicitation must be made with designated points of contact only.
- The City is not responsible for any costs or expenses incurred in preparing and submitting information in response to this Request for Proposal and Notice to Bidders.
- All material submitted will become the property of the City.
- Late proposals, faxed or e-mailed proposals will not be accepted.
- The City or its designee may request, after the submission date, additional information or written clarification of a proposal. However, proposals may not be amended after the submission date unless permitted by the City.

**Cross Reference:** \_\_\_\_\_ Deed dated \_\_\_\_\_, \_\_\_\_\_, and recorded \_\_\_\_\_, \_\_\_\_\_ as Instrument Number \_\_\_\_\_ in the Office of the Recorder of Bartholomew County, Indiana.

**DEED OF PRESERVATION AND CONSERVATION EASEMENT**

THIS DEED OF PRESERVATION AND CONSERVATION EASEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by CITY OF COLUMBUS, INDIANA (“Grantor”) and HISTORIC LANDMARKS FOUNDATION OF INDIANA, INC., an Indiana not-for-profit corporation (“Grantee”).

WITNESSETH:

WHEREAS, Grantee is a publicly supported non-profit corporation incorporated in the State of Indiana and has received a determination of exemption by letter dated August 31, 1964, from the United States Internal Revenue Service under Section 501(c)(3) and Section 509(a)(1) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the “Code”); and

WHEREAS, Grantee has as a principal corporate purpose the preservation of the historical, architectural, archeological and cultural aspects of real property in Indiana; and

WHEREAS, Grantee is a qualified conservation organization in accordance with Section 170(h) of the Code, and this Deed of Preservation and Conservation Easement (the “Conservation Easement”) is intended to qualify as a qualified conservation contribution in accordance with Section 170(h) of the Code; and

WHEREAS, Grantor is the owner in fee simple of certain real property more particularly described on Exhibit A attached hereto and made a part hereof (the “Land”) located in Columbus, Bartholomew County, Indiana, and commonly known as 148 Lindsey Street, which is improved with the following structures: Columbus Power House/Senior Center (the “Building”) and parking lot (the Land together with the Buildings and other improvements located thereon is hereafter referred to as the “Property”).

WHEREAS, because the Building possesses significant architectural, historic and cultural significance, the Building has been determined eligible for listing on the National Register of Historic Places maintained by the Secretary of the United States Department of the Interior, as attached hereto as Exhibit B; and

WHEREAS, the Building is significant in American and Indiana history and culture and contributes significantly to the cultural heritage and visual beauty of Bartholomew County and the State of Indiana and should be preserved; and

WHEREAS, in order to document the nature of the Building as of the Effective Date, attached hereto as Exhibit C and made a part hereof are photographs of the Building which accurately depict the Building as of the date hereof. The exterior surfaces of the Building as depicted on Exhibit C are referred to hereafter as the “Façades”; and

WHEREAS, the grant of a conservation easement by Grantor to Grantee on the Property will assist in preserving and maintaining the Building and its architectural, historic and cultural features and values pursuant to the provisions of the Indiana Uniform Conservation Easement Act, I.C. 32-23-5 (the “Act”).

NOW, THEREFORE, in consideration of Five Dollars (\$5.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor, pursuant to the Act, irrevocably warrants, grants and conveys unto Grantee, in perpetuity for the benefit of the people of Indiana, this perpetual Conservation Easement in, to and over the Property. In delineation and furtherance of the Conservation Easement granted hereby, Grantor and Grantee further covenant and agree as follows:

## **PURPOSE**

1. Purpose. It is the purpose of this Conservation Easement to assure that the Building’s architectural, historic and cultural features and values (the Building’s “conservation and preservation values”) will be retained and maintained forever substantially in their current condition for conservation and preservation purposes and to prevent any use or change of the Building that will significantly impair or interfere with the Building’s conservation and preservation values. In particular, and not in diminution of the foregoing, the purpose of this Conservation Easement is to retain substantially in their present appearance and condition the Building’s Façades.

## **GRANTOR’S COVENANTS**

2.1 Grantor’s Covenants: Covenant to Maintain. Grantor agrees at all times to maintain the Property in a good and sound state of repair. Grantor’s obligations shall require replacement, repair, and reconstruction by Grantor whenever necessary to preserve the Property in substantially the same condition and state of repair to that existing on the Effective Date. Grantor’s obligation to maintain shall also require that the Property’s fences, drives, walks and landscaping be maintained in good appearance. The existing lawn areas shall be maintained as

lawns, regularly mown. Subject to the casualty provisions of paragraphs 7 and 8, this obligation shall require replacement, rebuilding, repair and reconstruction of the Building whenever necessary in accordance with The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (36 CFR 67), as these may be amended from time to time (hereinafter the "Secretary's Standards"), or replaced by an alternative standard in accordance with paragraph 4 hereof and in a manner which maintains or recreates, as the case may be, the appearance of the Façades.

2.2 Grantor's Covenants: Prohibited Activities. The following acts or uses are expressly forbidden on, over, or under the Property, except as otherwise conditioned in this paragraph:

(a) the Building(s) shall not be demolished, removed or razed except as provided in paragraphs 7 and 8;

(b) nothing shall be erected or allowed to grow on the Property which would impair the visibility from street level of the Façades, except for temporary structures, such as scaffolds needed to assist workmen, and except for vegetation of the quantity and type as allowed in local zoning regulations;

(c) the dumping of ashes, trash, rubbish or any other unsightly or offensive materials is prohibited on the Property;

(d) the Property shall not be divided or subdivided in law or in fact and the Property shall not be devised or conveyed except as a unit; and

(e) no above ground utility transmission lines, except those reasonably necessary for the existing Building(s), may be created on the Property, subject to utility easements already recorded.

2.3 Grantor's Covenants: Covenant to Restore. *[if applicable]*

(a) Within six (6) months of the Effective Date, and before beginning any Restoration Work (as defined below), Grantor shall submit to Grantee a restoration plan for the restoration of the Building (the "Restoration Plan"). The Restoration Plan, including any amendments thereto, shall consist of all documents, drawings, and reports, if any, required by applicable laws, ordinances, and regulations to be submitted by Grantor to any governmental or regulatory authority to obtain any license, permit, or other approval, if any, required for the Restoration Work, together with such other documents, drawings, and reports as are reasonable necessary specifically to describe and illustrate the Restoration Work. Grantee shall either approve or disapprove the Restoration Plan within forty-five (45) days of submission and any amendment thereto within fifteen (15) days of submission. Any disapproval shall state specifically the reason for the disapproval. Grantee's failure to approve the Restoration Plan or amendment thereto within such periods shall be deemed an approval.

(b) Within one hundred eighty (180) days following approval of the Restoration Plan, Grantor shall begin the Restoration Work and proceed with diligence to complete the Restoration Work in strict compliance with the Restoration Plan. The Restoration Work shall be completed no later than eighteen (18) months following approval of the Restoration Plan. The “Restoration Work” is defined as follows: all materials, labor, and acts required to restore the Building to a condition consistent with its original construction or, to the extent such restoration is not possible, to a condition consistent with comparably styled real estate of the same original construction era, in the opinion of the Grantee. All Restoration Work shall be performed with first class materials and workmanship to restore the Improvements to a First Class Condition (as defined below). All Restoration Work shall be performed in full compliance with applicable laws, ordinances, and regulations.

(c) “First Class Condition” is defined to include, without limitation: chimneys tuckpointed or otherwise safe and sound; roof, flashings, gutters, and downspouts weathertight and of original materials or those specified in the restoration plan; masonry tuckpointed and otherwise secure and sound; painted surfaces maintained in appropriate colors and free of obvious peeling, rusting, or other discoloration; windows, doors, and other wooden elements maintained free of rot, caulked where appropriate, and close fitting; exposed metal surfaces free from rust or oxidation and protected with appropriate materials; window lights in place where originally existing and properly glazed; foundation walls sound and secure; fences maintained in sound condition; improvements and grounds reasonably free of debris, construction materials, or waste and without inappropriate fixtures, devices, or things attached to or around the Property; and the Property maintained in compliance with all applicable laws, ordinances, and regulations.

## **GRANTOR’S CONDITIONAL RIGHTS SUBJECT TO APPROVAL**

3.1 Conditional Rights Requiring Approval by Grantee. Without the prior express written approval of the Grantee in accordance with paragraph 3.2, which approval may be withheld or conditioned in the sole discretion of Grantee, Grantor shall not undertake any of the following actions:

(a) increase or decrease the height of, make additions to, change the exterior construction materials or colors of, or move, improve, alter, reconstruct or change the Façades (including fenestration) and roof of the Building.

3.2 Review of Grantor’s Requests for Approval.

(a) Grantor shall submit to Grantee for Grantee’s approval of those conditional rights set out at paragraph 3.1 two copies of information (including plans, specifications, and designs where appropriate) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity.

Grantor shall not make changes or take any action subject to the approval of Grantee unless expressly authorized in writing by an authorized representative of Grantee. Grantee reserves the right to consult with governmental agencies, nonprofit preservation and conservation organizations, and/or other advisors deemed appropriate by Grantee concerning the appropriateness of any activity proposed under this Conservation Easement.

(b) Within forty-five (45) days of Grantee's receipt of any plan or written request for approval hereunder, Grantee shall state in writing whether (a) it approves the plan or request as submitted, or (b) it disapproves the plan or request as submitted, in which case Grantee shall provide Grantor with written suggestions for modification or a written explanation for Grantee's disapproval. Any failure by Grantee to act within forty-five (45) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by Grantee of the plan or request as submitted to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted. In the event Grantor does not implement any approval granted pursuant to paragraph 3.1 and 3.2 for a period of one (1) year, such approval shall be void. Grantor may resubmit the request for approval; however, such approval may be given or denied in the sole discretion of Grantee.

4. Standards for Review. In exercising any authority created by this Conservation Easement to inspect the Property or the Building; to review any construction, alteration, repair or maintenance; or to review reconstruction of the Building following casualty damage, Grantee shall apply the Secretary's Standards. In the event the Secretary's Standards are abandoned, materially altered, inapplicable, or become, in the sole judgment of Grantee, inappropriate for the purposes set forth in this paragraph or in paragraphs 2.1 and 8 hereof then, upon written notice to Grantor, Grantee may apply reasonable alternative standards. In no case may any newly applied standard, whether the Secretary's Standards or alternative standards, be applied retroactively.

5. Public Viewing. Grantor shall not substantially impair the ability of the public (who have no legal ownership or use rights with respect to the Property) to view the Property and exterior of the Building from street level of the nearest public road or right-of-way without the prior approval of the Grantee. Grantee may make photographs, drawings, or other representations documenting the significant historical, cultural, and architectural character and features of the property and may publish them or distribute them for publication by others, or otherwise use them to fulfill its charitable or educational purpose.

## **GRANTOR'S RESERVED RIGHTS**

6. Grantor's Reserved Rights Not Requiring Further Approval by Grantee. Subject to the provisions of paragraphs 2.1, 2.2, and 3.1, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Conservation Easement and by Grantee without further approval by Grantee:

(a) the right to engage in all those acts and uses that: (i) are permitted by governmental statute or regulation; (ii) do not substantially impair the conservation and

preservation values of the Building; and (iii) are not inconsistent with the purpose of this Conservation Easement;

(b) pursuant to the provisions of paragraph 2.1, the right to maintain and repair the Building strictly according to the Secretary's Standards. As used in this subparagraph, the right to maintain and repair shall mean the use by Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Building. The right to maintain and repair as used in this subparagraph shall not include the right to make changes in appearance, materials, colors, and workmanship from that existing prior to the maintenance and repair without the prior written approval of Grantee in accordance with the provisions of paragraphs 3.1 and 3.2;

(c) the right to continue all manner of existing use and enjoyment or modification or addition to the Property subject to all local zoning and building codes, including but not limited to the maintenance, repair, and restoration of existing fences; the right to maintain existing driveways, roads, and paths with the use of same or similar surface materials; the right to maintain existing utility lines, gardening and building walkways, steps, and garden fences; the right to cut, remove, and clear grass or other vegetation and to perform routine maintenance, landscaping, horticultural activities, and upkeep, consistent with the purpose of this Conservation Easement; and

(d) the right to conduct at or on the Property educational and nonprofit activities that are not inconsistent with the protection of the conservation and preservation values of the Property.

## **CASUALTY DAMAGE OR DESTRUCTION; INSURANCE**

7. Casualty Damage or Destruction. In the event that the Building or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. All permanent repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Building and to protect public safety, shall be undertaken in accordance with the Secretary's Standards or such alternative standard determined in accordance with paragraph 4 hereof.

8. Review After Casualty Damage or Destruction. If, after reviewing the extent of casualty damage or destruction as described in paragraph 7 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Grantee agree that the restoration/reconstruction of the Building is impractical or impossible, and that the purpose of this Conservation Easement will not be served by such restoration/reconstruction, Grantor and Grantee may (but are not obligated to) agree that Grantor may alter, demolish, remove or raze the Building, and/or construct new improvements on the Property. Grantor and Grantee may agree to extinguish this Conservation Easement in

accordance with the laws of the State of Indiana and paragraph 23.2 hereof.

9. Insurance. Grantor at its expense shall (i) keep the Building insured by an insurance company acceptable to Grantee for the full replacement value against loss from perils commonly insured under standard fire and extended coverage policies against loss or damage resulting from fire, windstorm, vandalism, explosion and such other hazards as may be reasonably required by Grantee, which names Grantee as an additional insured party thereunder; and (ii) carry and maintain comprehensive general liability insurance against claims for personal injury, death and property damage under a policy issued by a financially responsible insurance company approved by Grantee, which names Grantee as an additional insured party thereunder with coverage per person per occurrence of not less than Seven Hundred and Fifty Thousand Dollars (\$750,000.00) adjusted annually for inflation from January 1, 2007. Grantor shall submit to Grantee an annual certificate of insurance evidencing the required coverages.

## **INDEMNIFICATION; TAXES**

10. Indemnification. Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, directors and employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person; physical damage to the Property; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance or regulation as a hazardous, toxic, polluting or contaminating substance; or other injury or other damage occurring on or about the Property, unless such injury or damage is caused by Grantee or any agent, trustee, employee or contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien; provided, however, that nothing contained herein shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

11. Taxes, Assessments and Charges. Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property unless Grantor timely objects to the amount or validity of the assessment or charge and diligently prosecutes an appeal thereof, in which case the obligation to pay such charges shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. Grantee is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to Grantor in the place of Grantor, any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition or lien asserted against the Property and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or assessment or into the validity of such tax, assessment, sale or forfeiture. Such payment if made by Grantee shall constitute a lien on the Property with the same effect and priority as a mechanic's lien and shall bear interest until paid

by Grantor at the highest statutory rate of interest permitted to be charged under applicable law; provided, however, that nothing contained herein shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property nor shall anything herein jeopardize the priority of this Conservation Easement.

## **ADMINISTRATION AND ENFORCEMENT**

12. Written Notice. Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by overnight courier, registered or certified mail with return receipt requested, or hand delivered; if to Grantor, then at 123 Washington Street, Columbus, Indiana 47201, and if to Grantee, then to 1201 Central Avenue, Indianapolis, Indiana 46202. Each party may change its address set forth herein by a notice to such effect to the other party.

13. Evidence of Compliance. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with any obligation of Grantor contained in this Conservation Easement.

14. Inspection. Representatives of Grantee shall be permitted at all reasonable times to inspect the Property.

15. Grantee's Remedies. In the event of an alleged violation of any of the provisions of this Conservation Easement, (i) Grantee may, following written notice to Grantor, institute suit(s) to enjoin any violation of the terms of this Conservation Easement by ex parte, temporary, preliminary and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Building to the condition and appearance required under this Conservation Easement; and/or (ii) Grantee may (but shall be under no obligation to) enter upon the Property, correct any such violation and hold Grantor responsible for the cost thereof. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder. In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Conservation Easement, including all reasonable court costs, and attorney's, architectural, engineering and expert witness fees, which costs and expenses shall constitute a lien on the Property with the same effect and priority as a mechanic's lien and shall bear interest until paid by Grantor at the highest statutory rate of interest permitted to be charged under applicable law; provided, however, that nothing contained herein shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property nor shall anything herein jeopardize the priority of this Conservation Easement. Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

16. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall

promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

17. Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Property or of any listing of the Property for sale and provide the opportunity for Grantee to explain the terms of the Conservation Easement to the real estate listing agent and potential new owners prior to sale closing.

18. Liens. Any lien on the Property created pursuant to any paragraph of this Conservation Easement may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien; provided, however, that no lien created pursuant to this Conservation Easement shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property nor shall any such lien jeopardize the priority of this Conservation Easement.

Grantor warrants to Grantee that no lien or encumbrance exists on the Property as of the Effective Date and that no existing lien or encumbrance has or will have priority over this Conservation Easement and the rights of Grantee hereunder subsequent to the Effective Date other than the lien of current ad valorem taxes not yet due or payable. Grantor shall immediately cause to be satisfied or released any lien or claim of lien that may hereafter come to exist against the Property.

19. Plaque. Grantor agrees that Grantee may provide and maintain a plaque on the Property giving notice of the significance of the Property and the existence of this Conservation Easement.

## **BINDING EFFECT; ASSIGNMENT**

20. Runs with the Land. The obligations imposed by this Conservation Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Property. This Conservation Easement shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

Anything contained herein to the contrary notwithstanding, an owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the Property by reason of a bona fide transfer. The restrictions, stipulations and covenants contained in this Conservation Easement shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the Property, but the failure to so insert the restrictions, stipulations and covenants contained in this Conservation Easement shall not affect the validity of this Agreement or the continuing validity and binding

effect of this Conservation Easement.

21. Assignment. Grantee may, at its discretion and with prior notice to Grantor, convey, assign or transfer this Conservation Easement to a unit of federal, state or local government or to a similar local, state or national organization that is a “qualified organization” under Section 170(h) of the Code, as amended, whose purposes, inter alia are to promote preservation or conservation of historical, cultural, or architectural resources (such as but not limited to the National Trust for Historic Preservation in the United States), provided that any such conveyance, assignment or transfer requires that the purpose for which the Conservation Easement was granted will continue to be carried out by the assignee.

In the event Grantee ceases to be qualified to hold this Conservation Easement under the Act, Grantee covenants and agrees that the rights and obligations herein accepted by Grantee shall, in that event, pass to and be vested in such other qualified organization or governmental body under the Act and Section 170(h) of the Code as Grantee shall elect; and if Grantee shall fail so to elect, then such rights and obligations shall pass to and be vested in the State of Indiana. If none of the instrumentalities named in this paragraph accepts these rights and obligations, then Grantee (or if Grantee fails, then Grantor) shall cause such rights and obligations to be accepted by an organization having as one of its principal purposes the preservation of historic or architectural landmarks or acceptance of easements for “conservation purposes” as defined in Section 170(h)(4) of the Code and which is an organization qualified to receive such easements under the Act and Section 170(h) of the Code.

22. Recording and Effective Date. Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the Office of the Recorder of Bartholomew County, Indiana. Grantor and Grantee intend that the restrictions arising under this Conservation Easement take effect on the day and year this instrument is recorded in the land records of Bartholomew County, Indiana (the “Effective Date”).

## **PERCENTAGE INTERESTS; EXTINGUISHMENT**

23.1 Percentage Interests. For purposes of allocating proceeds pursuant to paragraphs 23.2 and 23.3, Grantor and Grantee stipulate that as of the Effective Date, Grantor and Grantee are each vested with real property interests in the Property and that such interests have a stipulated percentage interest in the fair market value of the Property. Said percentage interests shall be determined by the ratio of the value of this Conservation Easement on the Effective Date to the value of the Property, without deduction for the value of the Conservation Easement, on the Effective Date. The values on the Effective Date shall be those values prescribed by federal regulation, including the value allowed as a deduction for federal income tax purposes attributable to this Conservation Easement. For purposes of this paragraph, the ratio of the value of the Conservation Easement to the value of the Property unencumbered by the Conservation Easement shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Property thereby determinable shall remain constant except that the value of improvements made to the Property after the Effective Date is reserved to Grantor.

23.2 Extinguishment. Grantor and Grantee hereby recognize that an unexpected change in the conditions surrounding the Property may make impossible the continued ownership or use of the Property for the purpose of this Conservation Easement and may necessitate extinguishment of the Conservation Easement. Such a change in conditions may include, but is not limited to, partial or total destruction of the Building resulting from casualty. Such an extinguishment must be the result of a judicial proceeding and shall entitle Grantee to share in any net proceeds resulting from the extinguishment in an amount that reflects its percentage interest in the fair market value of the Property, as such interest is determined under the provisions of paragraph 23.1, adjusted, if necessary, to reflect a partial termination or extinguishment of this Conservation Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's primary purposes. Net proceeds shall include, without limitation, net insurance proceeds, and proceeds from the sale or exchange by Grantor of any portion of the Property after the extinguishment. In the event of extinguishment, the provisions of this paragraph shall survive extinguishment and shall constitute a lien on the Property with the same effect and priority as a mechanic's lien; provided, however, that nothing contained herein shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

23.3 Condemnation. If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. All expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds. Grantor and Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraphs 23.1 and 23.2 unless otherwise provided by law; provided, however, that if the Property is encumbered by a mortgage or deed of trust at the time of such condemnation, Grantor and Grantee shall be entitled to their respective percentage interests in any proceeds remaining after satisfaction of all mortgages or deeds of trust.

## **INTERPRETATION**

24. Interpretation. The following provisions shall govern the effectiveness, interpretation, and duration of the Conservation Easement.

(a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of Property shall not apply in the construction or interpretation of this Conservation Easement, and this instrument shall be interpreted broadly to effect its purpose and the transfer of rights and the restrictions on use herein contained.

(b) This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Conservation Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law or private

agreement either in existence now or at any time subsequent hereto. This instrument may be re-recorded at any time by any person if the effect of such re-recording is to make more certain the enforcement of this instrument or any part thereof. The invalidity or unenforceability of any provision of this instrument shall not effect the validity of enforceability of any other provision of this instrument.

(c) Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Conservation Easement and such ordinance or regulation.

(d) This instrument shall be interpreted to transfer to Grantee any development or density rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning, transfer of development rights or similar ordinance or law the Property may be developed to a use more intensive (in terms of height, bulk or other objective criteria regulated by such ordinance or law) than the Property is devoted as of the Effective Date.

(d) This instrument reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understanding, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

(e) In the event Grantee shall at any time in the future become the fee simple owner of the Property, this Conservation Easement shall nevertheless remain severed from the fee.

## **AMENDMENT**

25. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Conservation Easement, provided that no amendment shall be made that will adversely affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of Indiana. Any such amendment shall be consistent with the protection of the conservation and preservation values of the Property and the purpose of this Conservation Easement; shall not affect its perpetual duration; shall not permit additional development on the Property other than the development permitted by this Conservation Easement on the Effective Date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, cultural, and open space values protected by this Conservation Easement. Any such amendment shall be recorded in the Office of the Recorder of Bartholomew County, Indiana. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

## **PUBLIC LAW 109-280 “SPECIAL RULES” COMPLIANCE**

26. Protection of Entire Building. Grantor and Grantee agree that the restrictions of this Conservation Easement shall apply to the entire exterior of the Building (including the front, sides, rear, and height of the Building), and that no change to the exterior of the Building maybe made by Grantor except as provided herein.

27. Inconsistent Changes Prohibited. Grantor and Grantee agree that Grantor shall not undertake, and Grantee shall not permit, any change to the exterior of the Building which would be inconsistent with the historical character of such exterior.

28. Certification of Qualification of Grantee Under Penalty of Perjury. By execution of this Conservation Easement, Grantor and Grantee agree, and hereby certify under penalty of perjury, that Grantee is a qualified easement-holding organization (as defined in Section 170(h)(3) of the Code) with a purpose of environmental protection, open space preservation, or historic preservation, and that the Grantee has both the resources to manage and enforce the restrictions of this Conservation Easement and a commitment to do so.

### **RIGHT OF FIRST REFUSAL**

29. Right of First Refusal.

(a) In the event Grantor intends to sell the Property and receives an offer to purchase, option, letter of intent, purchase contract or other agreement relating to the sale, transfer or conveyance of the Property at any time (the “Offer”) from a third party, which Grantor is willing to accept, Grantor shall, within five (5) days after receipt of such Offer, notify Grantee and deliver a true copy of such Offer to Grantee, which shall constitute an offer on the part of Grantor to sell and convey the Property to Grantee on all of the same terms and conditions as are contained in said Offer. The notice shall be mailed by Grantor to Grantee at its address of record by certified mail, return receipt attached. Grantee then shall have a period of thirty (30) days after receipt of a copy of such Offer in which to notify Grantor in writing of Grantee’s election to purchase the Property on all of the same terms and conditions as are contained in said Offer, if Grantee desires to do so. If the Offer calls for the delivery of any consideration other than the payment of money by the purchaser, or if the Offer is combined with or conditioned upon the sale or purchase of other property, Grantee shall be entitled to disregard such portion of the consideration or such combination or condition.

(b) Failure to Exercise. If Grantee does not notify Grantor of its election to purchase the Property within such thirty (30) day period, then Grantor shall be free to proceed with the sale of the Property to such third party strictly in accordance with the terms of said Offer; provided, however, that if the terms of said Offer are changed, or if such sale is not consummated with such third party within one hundred eighty (180) days after such Offer was originally received by Grantor, Grantor shall again be required to

offer the Property for sale to Grantee in accordance with the terms of this paragraph before proceeding to sell to a third party under said Offer or any other offer. The failure or neglect of Grantee to exercise this option and right of first refusal in any instance shall not constitute a waiver of this option and right of first refusal as to any subsequent Offer with regard to the same or any other part of or interest in the Property, and each such Offer shall be subject to the terms and provisions hereof.

(c) Remedies. If Grantor breaches this Right of First Refusal, including, without limitation, entering into a sale, transfer or conveyance in conflict with this Right of First Refusal, such transaction shall be voidable by Grantee and Grantee shall be entitled, in addition to any other remedy available at law or in equity, to seek specific performance and/or immediate injunctive relief as a result of Grantor's breach hereof. In addition Grantee shall be entitled to collect from Grantor all actual and consequential damages, costs, damages, losses and expenses (including all attorneys' fees, professional fees, court costs, title search fees and related costs) for such breach and in enforcing this Right of First Refusal. Notwithstanding anything to the contrary contained herein, this Right of First Refusal shall in no way restrict Grantor's right, power or authority to mortgage the Property.

TO HAVE AND TO HOLD, the said Deed of Conservation and Preservation Easement, unto the said Grantee and its successors and permitted assigns forever. This DEED OF CONSERVATION AND PRESERVATION EASEMENT may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, Grantor and Grantee have set their hands under seal on the days and year set forth below.

*Grantor and Grantee expressly acknowledge and understand that, by their execution of this document, the certification under paragraph 28 is made under penalty of perjury.*

GRANTEE

HISTORIC LANDMARKS  
FOUNDATION OF INDIANA, INC.

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

Its: \_\_\_\_\_  
(title)

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Historic Landmarks Foundation of Indiana, Inc., who acknowledged the execution of the foregoing instrument, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_, Notary Public residing  
in \_\_\_\_\_ County, Indiana

GRANTOR

\_\_\_\_\_

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

Its: \_\_\_\_\_  
(title)

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, who acknowledged the execution of the foregoing instrument, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_ 2015.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_, Notary Public residing  
in \_\_\_\_\_ County, Indiana

\_\_\_\_\_

MORTGAGEE

\_\_\_\_\_

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

Its: \_\_\_\_\_  
(title)

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, who acknowledged the execution of the foregoing instrument, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_ 2014.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_, Notary Public residing  
in \_\_\_\_\_ County, \_\_\_\_\_

I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Thomas H. Engle

This instrument prepared by (and return to) Thomas H. Engle, Attorney-at-Law  
Barnes & Thornburg LLP, 11 South Meridian Street, Indianapolis, Indiana 46204.

**EXHIBIT A**

Legal Description of the Land

Lot 1 in “Pumphouse Vacation” as recorded in Plat Book R, Page 272C in the Bartholomew County Recorder’s Office.

## EXHIBIT B

### Letter of Determination of Eligibility for National Register



Division of Historic Preservation & Archaeology • 432 W. Washington Street, 60714 Indianapolis, IN 46204-2738  
Phone 317-232-1649 • Fax 317-232-0683 • dpa@dnr.in.gov • www.in.gov/dnr/historic

Michael R. Pence, Governor  
Cameron F. Clark, Director



September 26, 2013

Richard McCoy  
C/O Community Development  
123 Washington Street  
Columbus, IN 47201

Richard:

Thanks for the opportunity to come to Columbus and view several of the properties you are interested in nominating to the National Register of Historic Places. The former Columbus Power House at Lindsey and 2<sup>nd</sup> streets is among the buildings we visited.

After seeing the building and reviewing the materials you sent us previously about the building, we do feel that it meets the criteria for eligibility for inclusion in the National Register of Historic Places.

We would be glad to point you to the proper resources to complete the application.

Sincerely,

Paul C. Diebold  
Team Leader, Survey & Registration

copies: none.  
enclosures: none.

---

The DNR mission: Protect, enhance, preserve and wisely use natural, cultural and recreational resources for the benefit of Indiana's citizens through professional leadership, management and education.

[www.DNR.IN.gov](http://www.DNR.IN.gov)  
An Equal Opportunity Employer

**EXHIBIT C**

**Photographs of the Building**



General View, looking southwest



General View, looking west



Central bay, East Facade



Senior Center Entrance  
Southeast Facade



North end, East Facade



North Façade, with Historic  
Entrance



South Facade



Central Bay, West Facade

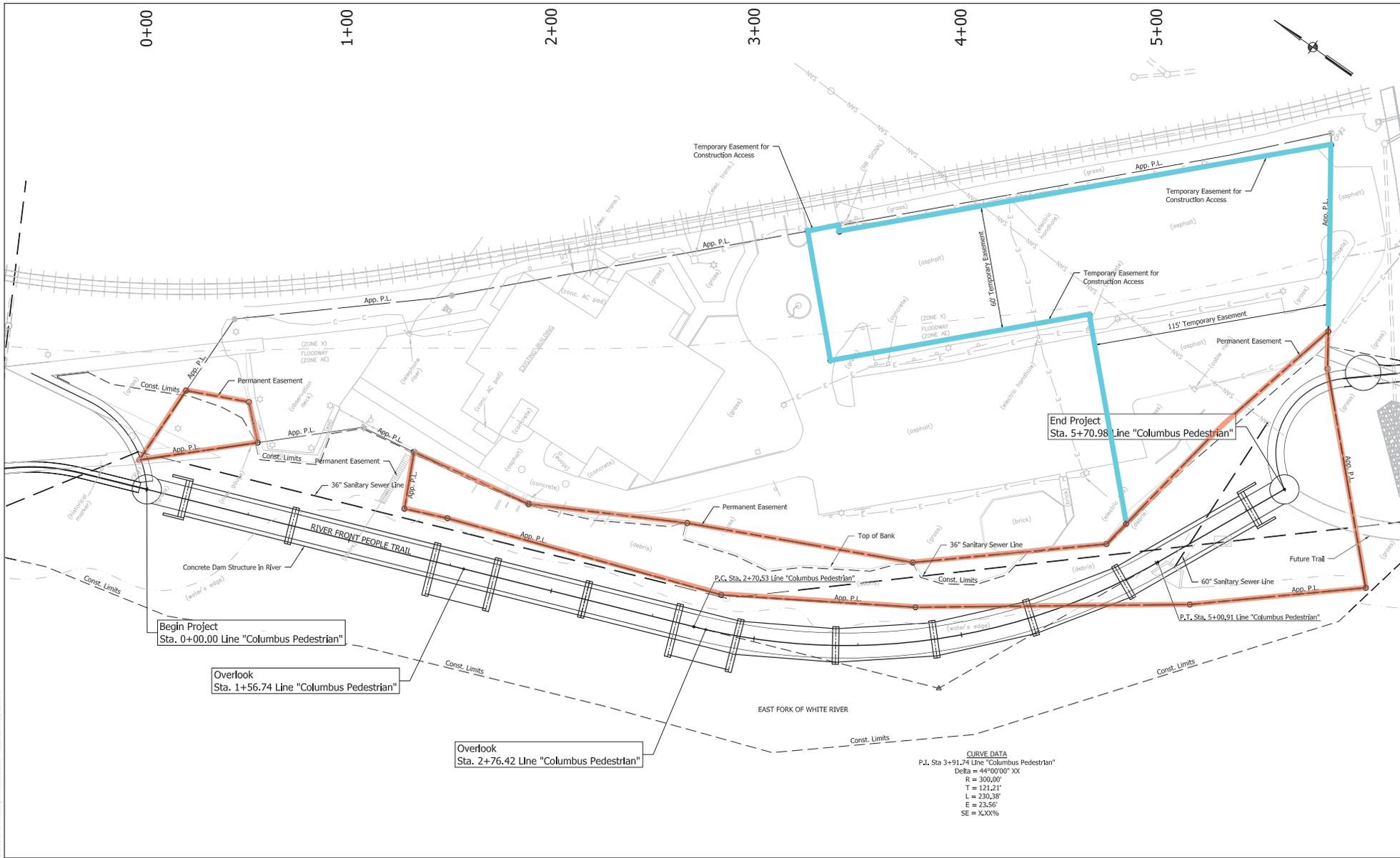


North end, West Facade



Detail, Southwest Corner





Begin Project  
Sta. 0+00.00 Line "Columbus Pedestrian"

Overlook  
Sta. 1+56.74 Line "Columbus Pedestrian"

Overlook  
Sta. 2+76.42 Line "Columbus Pedestrian"

End Project  
Sta. 5+70.98 Line "Columbus Pedestrian"

CURVE DATA  
P.I. Sta 3+91.74 Line "Columbus Pedestrian"  
Delta = 44°00'00" XX  
R = 300.00'  
T = 121.21'  
L = 230.38'  
E = 23.56'  
SE = 4.00%

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1625 N. Post Road  
Indianapolis, IN 46219  
Phone 317-893-2585  
Fax 317-893-2596  
www.ucindy.com

RECOMMENDED FOR APPROVAL	DESIGN ENGINEER	DATE
DESIGNED: CJM	DRAWN: AJM	
CHECKED: JNR	CHECKED: JNR	

CITY OF COLUMBUS	
COLUMBUS RIVERFRONT PEOPLE TRAIL	

HORIZONTAL SCALE	BRIDGE FILE
1" = 20'	-
VERTICAL SCALE	DESIGNATION
1" = 5'	-
SURVEY BOOK	SHEETS
-	1 of 2
CONTRACT	PROJECT
-	PEOPLE TRAIL

## **ENCROACHMENT AGREEMENT**

**THIS AGREEMENT** dated as of this \_\_\_ day of \_\_\_\_\_, 2014 between the City of Columbus, Indiana, an Indiana political subdivision (the “Grantee”) and the Louisville & Indiana Railroad Company (“Grantor”):

**WHEREAS**, Grantor is the owner of a section of property generally described as a railroad spur line running adjacent to Lindsey Street and between 1<sup>st</sup> and 3<sup>rd</sup> Streets in Columbus, Indiana which is more particularly described and depicted in attached Exhibit “A” (collectively referred to as “Grantor’s Property”);

**WHEREAS**, the Grantee is the owner of the property generally described as 148 Lindsey Street, Columbus, Indiana with improvements located on the property referred to as the Pump House which is more particularly described and depicted in attached Exhibit “B” (the “Grantee’s Property”);

**WHEREAS**, the improvements on both the Grantee’s Property and Grantor’s Property have existed for decades;

**WHEREAS**, certain portions of improvements located on the Grantee’s Property specifically the overhangs from the main building and portions of the sidewalk which are depicted in Exhibit “C” (collectively referred to as the “Encroachments”) have encroached onto Grantor’s Property (the “Encroachment Area”) for an unknown length of time;

**WHEREAS**, Grantor has made the determination that the Encroachments do not interfere with the use of Grantor’s Property; and

**WHEREAS**, the Grantee has requested Grantor’s permission to continue to maintain the Encroachments, and Grantor has agreed subject to the terms contained herein.

**NOW THEREFORE** for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grantor hereby grants to the Grantee, for the benefit of the Grantee and its successors, assigns, mortgagees, and tenants from time-to-time as owners and occupants of the Grantee’s Property, a non-exclusive easement (the “Easement”) over and across the Encroachment Area for the use, enjoyment, maintenance, repair, and replacement of the Encroachments, solely for purposes of continuing the existing use thereon as a pedestrian walkway for the benefit of the Grantee’s

Property. Grantor reserves the right to use the Encroachment Area in any manner not inconsistent with the Easement granted herein.

2. Grantor hereby further grants to the Grantee, for the benefit of the Grantee and its successors, assigns, mortgagees, and tenants from time-to-time as owners and occupants of the Grantee's Property, a non-exclusive easement (the "Median Easement") over and across the two medians located within the parking ingress and egress (the "Medians") for the use, enjoyment, maintenance, repair, and replacement of the Medians, solely for purposes of continuing the existing use thereon as an ornamental entrance to the, and for the benefit of the Grantee's Property. Grantee also agrees that any vegetation located in the Medians shall be maintained at a maximum height of thirty-four (34) inches from the road surface and no closer than eight (8) feet from the center line of the track. Grantor reserves the right to use the Encroachment Area in any manner not inconsistent with the Easement granted herein.
3. Grantee shall not acquire any right, title, or interest in or to Grantor's Property or the portion thereof affected by the Encroachments, except the right to maintain the Encroachments in accordance with the terms and conditions of this Agreement.
4. Under no circumstances shall Grantee have the right to enlarge or expand the improvements on the Encroachment Area, except as may be required by law, but this prohibition shall not be construed to prevent Grantee from repairing, maintaining, upgrading, replacing or removing said improvements as it deems necessary or appropriate for purposes of continuing the existing use.
5. Grantee shall make no alteration to Grantor's Property except those specifically set forth herein without Grantor's written permission.
6. Grantee covenants and agrees that it shall, at its sole cost, risk and expense, construct and maintain a security fence which shall serve as a barrier between the active railroad corridor owned and operated by Grantor and Grantee's property. The security fence shall be constructed of industrial grade posts and chain linked steel or comparable material such as wrought iron, anchored in concrete, a minimum of six (6) foot in height (the "Security Fence") no closer than eight (8) feet from the center line of the railroad and shall extend the full north-south length of Grantee's property adjacent to Grantee's current building and extending to the northern edge of the lot on Grantee's Property at a location as approved in advance by Grantor. The Security Fence shall terminate at the northern edge of

the parking ingress and egress. Grantee is not required to extend the Security Fence along the current portion of the Grantee's property south of the parking ingress and egress which is adjacent to current parking lot. Grantee acknowledges that the Security Fence does not serve to identify or define the boundary line between the Grantor's railroad corridor and the Grantee's property. The Security Fence shall be maintained by Grantee in a stable and secure condition and in good repair, suitable for its intended purpose as a barrier between the active railroad corridor and Grantee's property. This covenant shall run with Grantee's Property and shall be binding on Grantee, its successors and assigns.

7. The provisions of this Paragraph 7 are material considerations of this Agreement without which the Easement would not have been granted.
  - (a) Grantee acknowledges and understands that Grantor's Property is part of an active rail facility, posing significant risks of personal injury and property damage. Grantee is fully aware of the danger and knowingly and willingly assumes the risk of harm of injury to or death of any persons whomsoever and damage to or destruction of any property whatsoever that may occur due to the Encroachment or the proximity to Grantor's Property, except to the extent such harm is caused by Grantor's gross negligence or willful misconduct or that of Grantor's employees, agents or contractors. Without in any way limiting the scope of the preceding sentence, Grantee assumes the risk that the Security Fence may be disturbed, damaged, or destroyed by Grantor or third persons, and Grantee shall not make any claim against Grantor on account of same. Grantee further assumes full responsibility for the safety of its agents, contractors, employees, guests, invitees, and members of the public while on Grantee's Property.
  - (b) Grantee expressly releases Grantor from any and all liability and waives all claims for (1) bodily injury to any agent, contractor, employee, guest, or invitee of Grantee or any member of the public while on Grantee's Property; and (2) any property damage to any agent, contractor, employee, guest, or invitee of Grantee or member of the public while on Grantee's Property, except to the extent such claims arise from Grantor's gross negligence or willful misconduct or that of Grantor's employees, agents or contractors.
  - (c) Grantee shall indemnify, defend, and hold harmless the Indemnified Parties (as defined below) from and against any and all loss, damage,

liability, claims, suits, judgments, costs and expenses (including reasonable attorneys' and witnesses' fees) ("Liabilities") in any manner arising (1) from injuries sustained by Grantee or any of the Grantee's agents, contractors, employees, guests, invitees, or any members of the public while on Grantee's Property, including death at any time resulting therefrom, whether liability for such injuries or death be imposed under any so-called Workers' Compensation Law, or state or federal statute or the common law; (2) from injury to or death of any other person, including the Indemnified Parties; or (3) damage to any property whatsoever, including that of the Indemnified Parties, arising from or growing out of any act or omission of Grantee's agents, contractors, employees, guests, invitees, or any members of the public while on Grantee's Property. As used in this Agreement, "Indemnified Parties" means Grantor and its officers, directors, stockholders, employees, agents, servants, divisions, contractors, affiliates, parents, subsidiaries, predecessors, successors, and any one acting on its behalf.

- (d) **THE PARTIES INTEND TO MEET THE REQUIREMENTS OF THE EXPRESS NEGLIGENCE TEST UNDER INDIANA LAW. THE INDEMNIFICATION AND RELEASE OBLIGATIONS SET FORTH IN THIS PARAGRAPH 7 SHALL APPLY EVEN IF THE CLAIMS AND/OR LIABILITIES IN QUESTION SHALL HAVE BEEN CAUSED IN WHOLE OR PART BY THE NEGLIGENCE, NEGLIGENCE PER SE OR STRICT LIABILITY OF GRANTOR OR ITS OFFICERS, AGENTS, OR EMPLOYEES.**
  - (e) Grantee shall, at its sole cost and expense, procure and maintain in effect during the term of this Agreement the insurance specified in Exhibit "D".
  - (f) The covenants in this Paragraph 7 shall run with Grantee's Property and shall be binding on Grantee, its successors and assigns.
8. Grantee's use of the parking lot ingress and egress which crosses Grantor's tracks is expressly conditioned on Grantee's entering into the License Agreement for Private Crossing substantially in the form as attached as Exhibit "E".
9. This agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, administrators, estate trustees, successors and (where permitted) assigns.

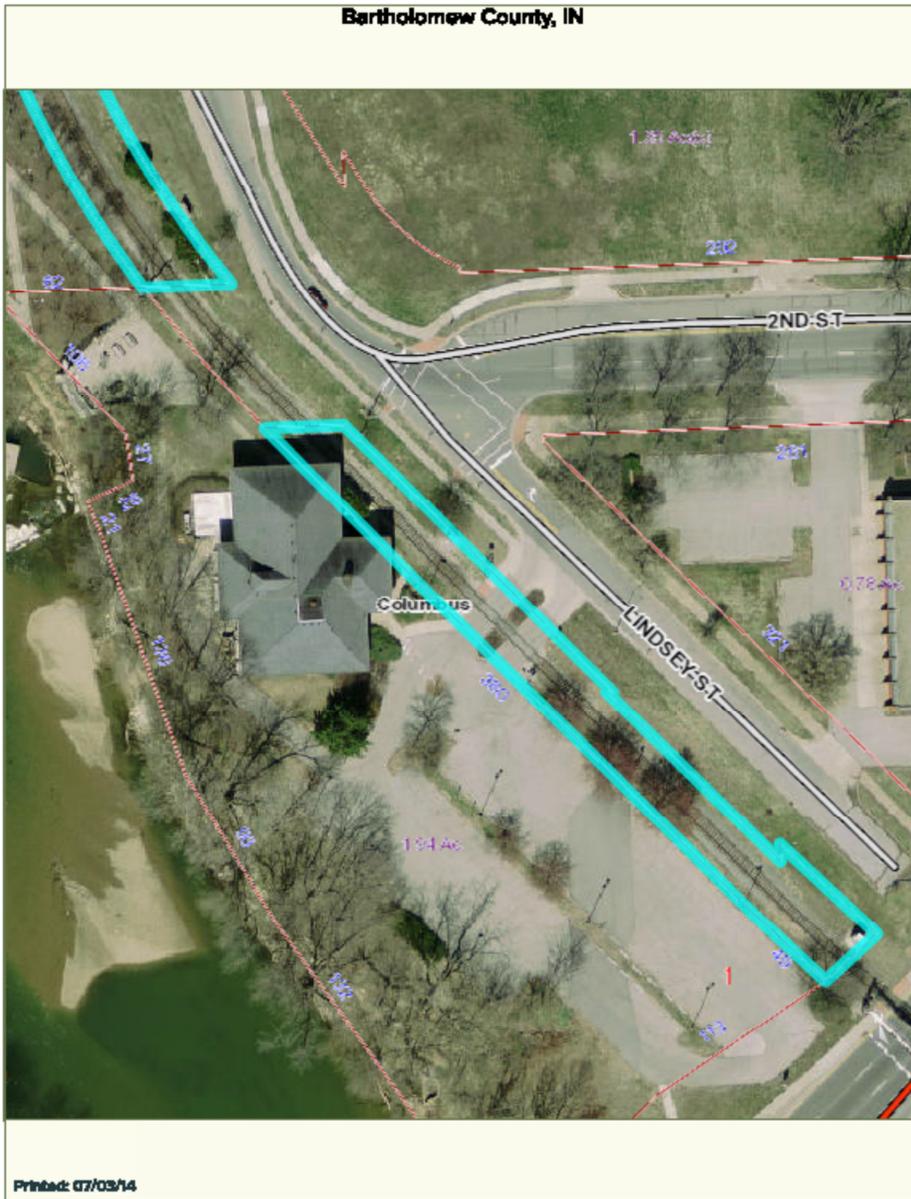




**Exhibit "A"**  
**(Grantor's Property)**

Legal Description: NE/4 NW/4 – 0.50 ACRES

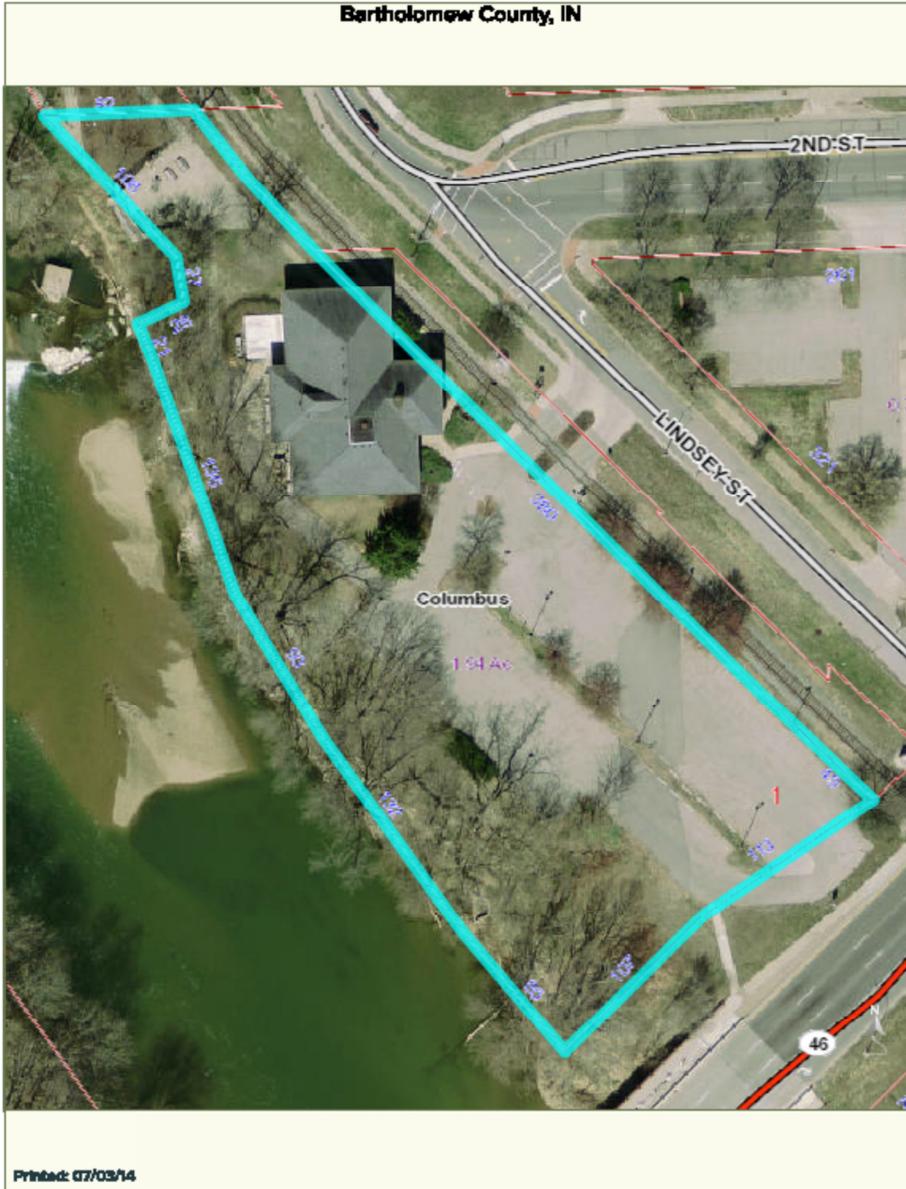
Parcel Number: 03-95-25-210-002.500-005



**Exhibit "B"**  
**(Grantee's Property)**

Legal Description: Lot 1- Pumphouse Vacation (R/272C) Ord #35 – 2011 Recorded 4/18/2012

Parcel Number: 03-95-25-210-002.300-005









**Exhibit "D"**  
**Insurance Requirements**

**A. DURING INSTALLATION OF THE SECURITY FENCE**

If Grantee shall use its own forces or shall employ a contractor for the installation of the Security Fence, then, before commencing work, Grantee or Grantee's contractor, as the case may be, shall provide and maintain the following insurance, in form and amount and with the companies satisfactory to, and as approved by, the Grantor.

- (a) Statutory Workers' Compensation and Employer's Liability insurance.
- (b) An Occurrence Form Railroad Protective Policy with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence for Bodily Injury Liability, Property Damage Liability and Physical Damage to Property, with Six Million Dollars (\$6,000,000.00) aggregate for the term of the policy with respect to Bodily Injury, Liability, Property Damage Liability and Physical Damage to Property. The policy must name

Louisville & Indiana Railroad Company  
500 Willinger Lane  
Jeffersonville, IN 47130

as the Insured, and shall provide for not less than thirty (30) days' prior written notice to Grantor of cancellation of, or any material change, in the policy.

**B. AFTER INSTALLATION OF THE SECURITY FENCE**

Grantee shall provide and maintain the following insurance, in form and amount with companies satisfactory to, and as approved by, Grantor:

- (a) Statutory Workers' Compensation and Employer's Liability Insurance.
- (b) Automobile Liability in an amount not less than One Million (\$1,000,000.00) Dollars combined single limit.
- (c) Commercial General Liability in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limit. In the event the policy is a Claims Made Policy, coverage shall include an aggregate of Six Million Dollars (\$6,000,000.00). The policy must name

Louisville & Indiana Railroad Company  
500 Willinger Lane  
Jeffersonville, IN 47130

as an additional insured, must include a severability of interest endorsement, and must not contain any exclusions related to (i) doing business on, near, or within fifty (50) feet of railroad facilities unless Grantee maintains a separate Railroad Protective Liability policy with the same coverage

limits, or (ii) loss or damage resulting from surface, subsurface pollution, contamination or seepage, or handling, treatment, disposal or dumping of waste materials or substances.

Grantee agrees to waive its right of recovery against Grantor for all claims and suits against Grantor. In addition, Grantee's insurers, through the terms of the policies or policy endorsements, must waive their right of subrogation against Grantor for all claims and suits. The certificates of insurance must reflect the waiver of subrogation endorsements. Grantee further waives its right of recovery against Grantor, and Grantee's insurers must also waive their right of subrogation against Grantor for loss of Grantee's owned or leased property or property under Grantee's care, custody or control.

Grantee shall provide Grantor with a certificate of insurance, evidencing such coverage and, upon request, the Grantee shall deliver a certified, true and complete copy of the policy or policies. The policies shall provide for not less than thirty (30) days' prior written notice to Grantor of cancellation of, or any material change in, the policies.

It is understood and agreed that the foregoing insurance coverage is not intended to, and shall not, relieve Grantee from or serve to limit Grantee's liability under the provisions of the EAgreement.

It is further understood and agreed that, so long as this Agreement shall remain in force, Grantor shall have the right, from time to time, to revise the amount or form of insurance coverages provided in this paragraph as circumstances or changing economic conditions may require. Grantor shall give Grantee written notice of any such requested change at least thirty (30) days' prior to the date of expiration of the then existing policy or policies, which notice constitutes an amendment to this Agreement and shall become a part hereof; and Grantee agrees to, and shall, thereupon provide Grantor with such revised policy or policies therefor.

All insurance provided must be written by an insurance company acceptable to Grantor or with a current Best's Insurance Guide Rating of A or better and must be primary and shall not be reduced or limited by any insurance procured by Grantor.

**Exhibit "E"**  
**LICENSE AGREEMENT FOR PRIVATE GRADE CROSSING**

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2014, by and between Louisville & Indiana Railroad Company (the "Railroad"), and the City of Columbus, Indiana, an Indiana political subdivision, (the "Licensee");

WHEREAS, the Licensee desires to use and maintain a private vehicular crossing, at grade, over the Railroad's tracks and right-of-way; and

WHEREAS, the Railroad is willing to grant the Licensee a license to cross its tracks and right-of-way on the terms and conditions set forth below;

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

**1. GRANT OF LICENSE TO LICENSEE**

1.1 In consideration of the fees to be paid by the Licensee and in further consideration of all covenants and agreements contained herein to be kept, observed, and performed by the Licensee, the Railroad hereby grants to the Licensee, for the term of this Agreement, the right to, use one (1) private vehicular crossing, at grade, 48 feet in width, upon and across the tracks and right-of-way of the Railroad's Columbus Industrial Lead at Railroad Milepost 0.34, near Columbus, Bartholomew County, Indiana (the "Crossing"), as shown on the attached Exhibit "E-1" (the "License").

1.2 The License is granted subject and subordinate to all outstanding rights of the Railroad and third parties to maintain existing facilities, including without limitation, pipelines and other underground facilities, wirelines, communications and signal facilities, and other facilities upon, along, under, over, or across any or all parts of the Crossing; all rights in favor of the Railroad's mortgagees and other secured creditors; and the Railroad's right to renew any existing right, to extend the term of any existing right, and to grant any new or additional right, license, or easement unto other parties, including without limitation, recreational trails and public transit systems, as the Railroad, in its sole discretion should deem necessary, convenient or appropriate, without liability to the Railroad for compensation or damages. The License is made without covenant of title or covenant for quiet enjoyment.

**2. FEES**

2.1 Upon execution of this Agreement, the Licensee shall pay the Railroad a "License Preparation Fee" of \$1,000.00.

2.2 The Licensee shall pay the Railroad an "Annual License Fee" of \$2,200.00, payable on the date of this Agreement and on each anniversary of the date of this Agreement, and subject to periodic review and adjustment by the Railroad.

2.3 The Licensee shall pay the Railroad an "Annual Signal Inspection and Maintenance Fee" of \$1,200.00, payable on the date of this Agreement and on each anniversary of the date of this Agreement, and subject to periodic review and adjustment by the Railroad.

2.4 The Licensee's payment of the Annual License Fee and the Annual Signal Inspection and Maintenance Fee does not create an irrevocable license for any period.

2.5 The Licensee shall also indemnify the Railroad against, and shall pay or reimburse the Railroad for, any additional taxes or assessments levied solely as a result of the existence of the Crossing.

### **3. CONSTRUCTION AND MAINTENANCE OF CROSSING**

3.1 The Crossing is located as depicted on Exhibit "E-1" and no departure shall at any time be made therefrom by the Licensee except upon permission in writing granted by the Railroad.

3.2 Intentionally left blank.

3.3 The Railroad shall maintain, repair and renew the Crossing at the sole risk, cost and expense of the Licensee in accordance with the provisions of Article 3.16 hereof. The Railroad may, at its option, upon written notice to the Licensee require the Licensee to promptly maintain, repair or renew the whole or any part of the Crossing at the sole risk, cost and expense of the Licensee.

3.4 The Crossing has been constructed and installed to include adequate drainage facilities necessary for the prevention of flooding or any other kind of water damage in the general area which drainage facilities shall be maintained, repaired, renewed and cleaned by the Railroad at the sole risk, cost and expense of the Licensee in accordance with the provisions of Article 3.16 hereof. The Railroad may, at its option, upon written notice to the Licensee require the Licensee to promptly maintain, repair or renew or clean the drainage facilities at the sole risk, cost and expense of the Licensee.

3.5 The Licensee shall at all times keep the Crossing and the flangeways in the Crossing free and clear of all spilled materials, dirt, ice, snow and debris to the Railroad's satisfaction at the sole risk, cost and expense of the Licensee.

3.6 The Licensee shall at all times keep the vegetation on its property cut in such a manner and to such an extent as is necessary to permit a person approaching the Crossing from either direction to see approaching trains or equipment before such person reaches a position of danger on or near the Crossing.

3.7 The Licensee shall at all times keep the area of the Crossing free of all parked vehicles or other moveable obstructions as is necessary to permit a person approaching the Crossing from either direction to see approaching trains or equipment before such person reaches a position of danger on or near the Crossing.

3.8 The Licensee shall at all times prevent the erection on its premises of any structure which would interfere with the ability of a person approaching the Crossing from either direction to see approaching trains or equipment before such person reaches a position of danger on or near the Crossing.

3.9 If at any time the Railroad should deem crossing flagmen or watchmen desirable or necessary to properly protect the Crossing, the Railroad may place flagmen or watchmen thereat at the sole risk, cost and expense of the Licensee, which covenants and agrees to bear the full cost and expense thereof and to promptly reimburse the Railroad upon demand and in accordance with the provisions of Article 3.16 hereof. The furnishing or failure to furnish flagmen or watchmen by the Railroad, however, shall not release the Licensee from any and all other liabilities assumed by the Licensee under the terms of this Agreement.

3.10 The Railroad shall have the right from time to time, at the sole risk, cost and expense of the Licensee, to take up and replace all or any part of the Crossing in order to maintain, repair or renew facilities of the railroad within the Crossing area and to bill the Licensee therefor in accordance with the provisions of Article 3.16 hereof.

3.11 In the event the Railroad shall be required, or may desire at any time, or from time to time, to change the grade or location of any of its tracks or facilities, or to remove, construct or add to any of its tracks or facilities upon land owned or used by the Railroad, then the Licensee shall, without cost or expense to the Railroad, and within thirty (30) days after service of notice in writing requiring the Licensee so to do, make such adjustments or relocations in the Licensee's facilities herein provided for as may in the opinion of the Railroad be necessary and adequate.

3.12 The Licensee shall erect, maintain and renew appropriate signs, or notices, satisfactory to the Railroad, setting forth that the Crossing is private; and shall take further steps as may be necessary to prevent unauthorized

persons from entering upon or using the Crossing for any purpose whatsoever. If it so desires, the Railroad may at any time install, maintain and renew such signs, or such notices, and the Licensee hereby agrees to pay all cost and expense incident to the installation, maintenance and renewal thereof in accordance with the provisions of Article 3.16 hereof.

3.13 The Licensee shall take or cause to be taken such precautionary measures as may be necessary to avoid injury or death of persons or damage to or destruction of property at the Crossing; and if the Railroad should at any time, and from time to time, request the Licensee to take any other measures or to furnish or upgrade any form of protection at the Crossing, the Licensee at its sole risk, cost and expense, shall promptly cause the protection requested or directed by the Railroad to be installed and maintained; or the Railroad may, at its option, install and maintain such protection as in its judgment may be necessary, and the Licensee hereby agrees to pay, or to reimburse the Railroad for, the cost and expense thereof, in accordance with the provisions of Article 3.16 hereof.

3.14 The Licensee shall also, at its sole risk, cost and expense, erect, maintain, repair and renew appropriate curbs, barricades and fences satisfactory to the Railroad, which shall be suitably situated.

3.15 If it is deemed necessary by the Railroad, federal, state or municipal authorities, or any other governing body, to install additional automatic crossing protection at the Crossing, said automatic crossing protection shall be installed, maintained and ultimately removed by the Railroad at the sole risk, cost and expense of the Licensee.

3.16 All costs and expenses in connection with the maintenance, repair, alteration, renewal, relocation and removal of the Crossing shall be borne by the Licensee, and in the event of materials furnished or work performed by the Railroad under the stipulated right to perform such work of construction, maintenance, repair, alteration, renewal, relocation or removal under any article hereof, the Licensee agrees to pay to the Railroad the actual cost of material plus the current applicable overhead percentages for storage, handling, transportation, purchasing and other related material management expenses and the actual cost of labor plus the current applicable overhead percentages as developed and published by the accounting department of the Railroad for fringe benefits, payroll taxes, administration, supervision, use of tools, machinery and other equipment, supplies, employers liability insurance, public liability insurance, and other insurance, taxes, and all other indirect expenses. The Licensee agrees to pay such bills within thirty (30) days of the presentation thereof by the Railroad.

#### **4. THE LICENSEE'S USE OF THE CROSSING**

4.1 No person other than the Licensee (including its agents, employees, and customers and other invitees) shall be permitted to use the Crossing. Licensee hereby agrees that the Crossing shall be a private crossing for the use and convenience of the Licensee (including its agents, employees, and customers and other invitees) only, and shall not be, or be permitted to become, a public highway or public crossing without the written consent and approval of the Railroad.

4.2 The Licensee understands and agrees that the Crossing shall not be permitted to become a public grade crossing without the Railroad's express, written consent. If the Crossing should become a public grade crossing, the Licensee shall bear, or shall cause such public authority as may assume responsibility for said public grade crossing to bear, the sole risk, cost and expense of furnishing, installing and maintaining any signs, automatic signals, or other protective devices that the Railroad shall at its sole discretion deem necessary to protect the public grade crossing.

4.3 The Railroad shall have the right at all times to paramount use of its tracks, right-of-way, property and facilities at the Crossing. The Licensee's use of the Crossing shall cause no interference with the safe, constant, continuous, and uninterrupted use of the tracks, right-of-way, property and facilities of the Railroad and the Licensee shall, at its sole risk, cost and expense, immediately take whatever action as may be necessary to eliminate any such interference that may occur.

4.4 The Licensee shall, immediately and at its sole risk, cost and expense, take all reasonable precautions to prevent its use of the Crossing from interfering with all rights of the Railroad and the Railroad's licensees and tenants to construct, use, maintain, repair, renew and ultimately remove facilities, including without limitation,

pipelines and other underground facilities, wirelines, communications and signal facilities, and other facilities upon, along, under, over, or across any or all parts of the Crossing, including such facilities that exist as of the date of this Agreement and any such facilities as may be constructed or installed in the future. The Licensee shall, at its sole risk, cost and expense, immediately take whatever action as may be necessary to eliminate any such interference that may occur.

4.5 The Licensee shall exercise the greatest care in the use of the Crossing and shall require in each instance when a vehicle shall approach the Crossing, the same shall be stopped, and shall not proceed over the tracks of the Railroad until the driver, or other person in charge thereof, shall have ascertained that no train or equipment of the Railroad is approaching the Crossing.

4.6 The Licensee shall comply with all applicable laws, ordinances, and government regulations now or hereafter in effect in its occupancy and use of the Crossing. The Licensee shall indemnify and hold the Railroad harmless from any failure to do so and from any fines, penalties, forfeitures, or judgments resulting from the Licensee's failure to comply with any applicable law, ordinance, or government regulation.

## **5. RISK, LIABILITY, AND INDEMNITY**

5.1 The Licensee recognizes that the Railroad's operations at the Crossing; any use of the tracks, right-of-way, property and facilities of the Railroad at the Crossing; the construction, use, maintenance, repair, alteration, renewal and removal of the Crossing by the Licensee or others; or the presence of personnel or equipment of the Licensee or others at or in the vicinity of the Crossing involve the risk of loss of life, personal injury, and property loss or damage, including the loss of use thereof. The Licensee expressly assumes all risk of such loss, injury and damage, and specifically covenants that the grant of the License shall be at the sole risk of the Licensee, and that neither the Railroad, nor any corporate affiliate of the Railroad, shall have any responsibility whatever for any such loss, injury or damage.

5.2 The Licensee, as further consideration for grant of the License, specifically covenants to assume all liability for, and to forever protect, defend, indemnify and save harmless the Railroad, and all corporate affiliates of the Railroad, from and against all cost, expense, claims and liability for damages, or loss resulting from death, personal injury, or property loss or damage, arising out of the Railroad's operations at the Crossing; any use of the tracks, right-of-way, property and facilities of the Railroad at the Crossing; the construction, use, maintenance, repair, alteration, renewal and removal of the Crossing by the Licensee or others; or the presence of personnel or equipment of the Licensee or others at or in the vicinity of the Crossing; regardless of whether caused in whole or in part by the fault, failure, negligence or misconduct of the Railroad, or any corporate affiliate of the Railroad.

5.3 All obligations of the Licensee under the grant of the License to forever protect, defend, indemnify and save harmless the Railroad, and all corporate affiliates of the Railroad, shall also extend to their directors, officers, agents, employees and to the Railroad's licensees and tenants, and their respective directors, officers, agents and employees.

## **6. INSURANCE**

6.1 Before the License shall be effective, the Licensee shall at its sole cost and expense procure, provide and deliver to the Railroad and thereafter maintain in effect during the term of this Agreement and until the Crossing has been removed (whichever shall be later) Comprehensive General Liability insurance in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limit; Automobile Liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit; and Statutory Worker's Compensation and Employer's Liability insurance. The policy shall name the Railroad as an Additional Insured, must include a severability of interest endorsement, and must not contain any exclusions related to doing business on, near, or adjacent to railroad facilities. The Licensee agrees to waive its right of recovery against Railroad for all claims and suits against Railroad. In addition, the Licensee's insurers, through the terms of the policies or policy endorsements, must waive their right of subrogation against Railroad for all claims and suits. The certificates of insurance must reflect the waiver of subrogation endorsements.

6.2 If, with the Railroad's prior written consent, the Licensee shall use its own forces or shall employ a contractor for the construction, maintenance, repair, alteration, renewal or removal of the Crossing, then before commencing such work, the Licensee or the Licensee's contractor, as the case may be, shall at its sole cost and expense procure, provide and deliver to the Railroad and thereafter maintain in effect during the construction, maintenance, repair, alteration, renewal or removal of the Crossing, insurance as required in Article 6.1 and Railroad Protective Liability insurance in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence and Six Million Dollars (\$6,000,000.00) aggregate for bodily injury, death and property damage liability. The Railroad Protective Liability policy shall name the Railroad as Insured and shall provide for not less than ten (10) days prior written notice to the Railroad of cancellation of, or any material change, in the policy.

6.3 All insurance provided must be written by an insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A or better and must be primary and shall not be reduced or limited by any insurance procured by Railroad.

6.4 The Licensee shall provide the Railroad with a Certificate of Insurance evidencing that it has procured the insurance required by the License, and shall also provide the Railroad with a Certificate of Insurance evidencing the continuation of such coverage on each anniversary of this Agreement.

6.5 Furnishing of insurance by the Licensee shall not limit its liability under this Agreement, but shall be additional security therefor.

## **7. TERM AND TERMINATION**

7.1 Subject to the provisions of Article 6, this Agreement shall take effect upon execution hereof and shall continue in effect thereafter until terminated as provided herein.

7.2 If the Licensee stops using the Crossing for the purposes specified in Article 4 of this Agreement or continues to be in default of any covenant, agreement, or provision incorporated into this Agreement for a period of thirty (30) days after written notice of such default from the Railroad, the Railroad may, at its option, immediately terminate this Agreement and the License provided herein by providing written notice of termination to the Licensee.

7.3 If the Railroad reasonably determines in its sole discretion that changes in circumstances including, without limitation, increased rail or motor vehicular traffic or changes in use of the Crossing create an unacceptable risk to public safety or to the safety of railroad operations, the Railroad may terminate this Agreement by giving the Licensee thirty (30) days' prior written notice.

7.4 The Licensee may voluntarily terminate this Agreement by giving the Railroad at least thirty (30) days' prior written notice of its intent to terminate and specifying the termination date.

7.5 Termination of this Agreement shall not affect any of the rights, obligations, duties, or liabilities of the parties that had accrued before termination.

7.6 After termination, the Railroad may immediately re-enter and repossess the Crossing, remove all persons and property from the Crossing, and resort to any action to recover the Crossing as may be authorized by law.

## **8. NO WAIVER**

8.1 Any waiver by either party at any time of its rights as to anything herein contained shall not be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless said party waives such covenant or breach in writing.

8.2 Neither the failure of the Railroad to object to any work done, material used, or method of construction or maintenance of the Crossing, nor any approval given or supervision exercised by the Railroad, shall be construed as an admission of liability or responsibility by the Railroad, or as a waiver by the Railroad of any of the obligations, liability and/or responsibility of the Licensee.

## **9. NOTICE(S)**

9.1 All notices and communications concerning or required by this Agreement shall be addressed to the Licensee at: City Attorney, City of Columbus, 123 Washington Street, Columbus, Indiana 47201.

9.2 All notices and communications concerning or required by this Agreement shall be addressed to the Railroad at: Louisville & Indiana Railroad Company, 500 Willinger Lane, Jeffersonville, In 47130, Attn: Manager – Real Estate.

9.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be effective upon actual receipt, the addressee's refusal of delivery, or the carrier's unsuccessful attempt to deliver the notice to the sender, whichever occurs first.

## **10. TITLE**

10.1 The Licensee shall not at any time own or claim any right, title or interest in or to the Railroad's property occupied by the Crossing, nor shall the exercise of this Agreement for any length of time give rise to any title to said property, or any right or interest in the Licensee other than the license created hereby.

## **11. GENERAL PROVISIONS**

11.1 Neither this Agreement nor any provision hereof nor agreement or provision included herein by reference shall operate or be construed as being for the benefit of any third person.

11.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the Railroad, and the heirs, legal representatives, successors or assigns of the Licensee, as the case may be, but, this License is a personal privilege granted to the Licensee and therefore no assignment sublease or sublicense hereof or of any rights or obligations hereunder shall be valid for any purpose without the prior written consent of the Railroad.

11.3 This Agreement contains the entire understanding between the parties hereto, and cannot be changed, altered, amended or modified, except by written instrument subsequently executed by the parties hereto.

11.4 Neither the form nor any language of this Agreement shall be interpreted or construed in favor of or against either party hereto.

11.5 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law. Each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status from each other separate division for the determination of legality, so that if any separate division is determined to be void, voidable, invalid or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division herein contained, or any other combination thereof.

11.6 If any provision of this Agreement is determined to be invalid, illegal, or unenforceable by a court of competent jurisdiction, then that provision only shall be held inoperative and as though not incorporated into the Agreement. The remainder of the Agreement shall remain operative and in full force and effect.

11.7 This Agreement shall be construed under and enforced according to the laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each of which shall be evidence of this Agreement but which shall constitute but one agreement, as of the day and year first above written.

LOUISVILLE & INDIANA RAILROAD  
COMPANY

CITY OF COLUMBUS, INDIANA

By: \_\_\_\_\_  
Name: Kim A. Williams  
Title: Manager - Real Estate

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Witnessed by:

Witnessed by:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

**Exhibit “E-1”**